



SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: CIVIL TERM: PART 27

-----X  
DR. MAC TRUONG,

Plaintiff,

- against -

Index No.  
604650-97

CHARLES SCHWAB, Member: SIPC/N.Y. STOCK EXCHANGE,

Defendant.

-----X  
CHARLES SCHWAB & CO., INC.,

Defendant and Third-Party  
Interpleading Plaintiff,

- against -

TRAN DINH TRUONG, VISHIPCO LINES and  
DAI NAM HAG HAI CONGTY VISHHIPCO  
LINE OF VIETNAM,

Third-Party  
Interpleaded Defendants.

-----X  
60 Centre Street  
New York, New York 10007  
September 25, 2002

B E F O R E:

HONORABLE IRA GAMMERMAN,  
Justice

FILED

SEP 26 2002

COURT CLERK'S OFFICE  
NEW YORK

A P P E A R A N C E S:

STEVEN A. HERSHKOWITZ, P.C.  
Attorneys for Plaintiff  
350 Broadway  
New York, New York  
BY: STEVEN A. HERSHKOWITZ, ESQ.

LAYTON BROOKS & HECHT LLP  
Attorneys for Defendant Schwab  
400 Park Avenue  
New York, New York  
BY: EAMONN F. FOLEY, ESQ.

LEVY BOONSHOFT & SPINELLI, P.C.  
Attorneys for Third-party interpleaded Defendants  
477 Madison Avenue  
New York, New York  
BY: DAVID M. LEVY, ESQ.

JOHN HAIG ANLIAN, ESQ.  
Attorney for Hugh Mac Truong  
187 Anderson Avenue  
Fairview, New Jersey

RICHARD H. SWEIG, ESQ.  
Attorney for intervenor Viet Nam  
325 Broadway  
New York, New York

RICHARD S. FEIS  
Senior Court Reporter

THE COURT: This case is 17084. There's another case 17234 which has been consolidated. The latter case bears Index Number 102512-98. The index number of this case is 604650-97.

There are two matters in this case. The first relates to the cross-claim that is asserted I presume by the government of Viet Nam; that's the party.

I indicated that unless certain documents were <sup>and</sup> provided in depositions taken by today I was going to dismiss the cross-claim.

<sup>that has</sup>  
~~They have~~ not been done, the cross-claim is dismissed.

MR. SWEIG: Could the Court re-schedule the deposition.

THE COURT: Absolutely not. The cross-claim is dismissed. I made my position very clear.

We now have a case, as I recall, <sup>that</sup> has been resolved to a substantial degree by Judge Cozier.

There is a motion by-- to intervene by, I guess, Hugh Mac Truong.

MR. LEVY: Yes, your Honor.

THE COURT: The purpose <sup>He wants to intervene</sup> ~~presumably that he~~ ~~states is to compel Charles Schwal~~ to obtain an order to direct the plaintiff, I guess, the father is the

1 plaintiff, to return certain common shares of a mutual  
 2 fund known as FSECX ~~from~~ <sup>from</sup> the Plaintiff's personal  
 3 accounts to a separate restricted account or to the  
 4 Vishipco account at Schwab and <sup>Wells</sup> Schwab to release the  
 5 son's, Hugh's, custodial account that was originally  
 6 opened by the plaintiff in 1987.

7 I think the motion-- I am denying the motion.  
 8 It seems to me it is premature and it lacks merit. It  
 9 hasn't been demonstrated that the claim, that ~~is~~ Hugh is  
 10 asserting <sup>involves</sup> ~~is~~ a common question of law or fact with  
 11 respect to this case, which is really a dispute now  
 12 between Mr. Truong, Dr. Truong and the, I guess, private  
 13 entities who claim this money; correct.

14 MR. LEVY: Which has already been resolved.

15 THE COURT: You say that has been resolved.

16 MR. LEVY: It has has been resolved, affirmed  
 17 by the Appellate Division, ~~heavy~~.

18 THE COURT: In any event, the motion papers  
 19 don't even include a <sup>proposed</sup> ~~post~~ pleading setting forth a  
 20 claim. It seems to me ~~to be~~ <sup>there is</sup> a serious question as to  
 21 whether or not the funds in the custodial account are  
 22 traceable to the funds that are the subject of this  
 23 action, <sup>those that</sup> ~~on whose behalf~~ the plaintiff collected  
 24 ~~substantial assets~~ of over an extended period of time;  
 25 or whether or not the plaintiff is entitled to receive  
 26

1  
2 any commissions for those efforts.

3 In any event, even if the proposed intervenor  
4 had incorporated the claims that he wants to make in a  
5 complaint, the dubious and complex nature of the relief  
6 that is sought, it seems to me, <sup>against</sup> mitigates, permitting him  
7 to intervene.

8 So I am denying the motion to intervene.

9 That takes care of that motion.

10 Now, I have motion for summary judgment by  
11 whom, by the cross-claimant.

12 That motion is denied in as much as I've  
13 dismissed the cross-claim.

14 MR. SWEIG: If I may for the record, we had  
15 filed with the clerk yesterday a motion to dismiss. I  
16 believe that one--

17 THE COURT: It's moot.

18 MR. ANLIAN: It has been demonstrated that my  
19 client--

20 THE COURT: Counselor, I'm not revisiting the  
21 motion to intervene.

22 What is the status of this case now.

23 MR. HERSHOWITZ: For Dr. Truong Justice Cozier  
24 cut off Dr. Truong's rights to commissions or to recover  
25 under contract as of 1995 which is the date or the year  
26 in which he has ordered to self-help, take what he

1  
2 believed was his rightful commission. The Appellate  
3 Division affirmed Justice Cozier's. It did not, as  
4 Justice Cozier did, did not extinguish entirely the  
5 plaintiff's rights to any commissions.

6 What's left now is to go forward with an  
7 accounting to determine by what form the Court finally  
8 determines is appropriate, whether to trace back the  
9 original share of Tran Din Truong (Ph.) and then compute  
10 it through the date of 1995.

11 I suggest that there are several issues there  
12 because although the lawsuit was brought in '77 to  
13 recover these funds from Chase, they didn't even come  
14 into position or either plaintiff or I on behalf of  
15 Truong until '86 when they were unblocked by the  
16 Treasury Department between '85 and '86 that Dr. Truong  
17 was able to manage those funds.

18 So whether or not this Court, I understand the  
19 Court may determine that he's not entitled but the value  
20 of his shares still until that time nobody was managing  
21 those funds. So it's only as of that time that issue of  
22 how the funds were managed and how the value was  
23 increased thereby is even before the Court. I think  
24 from '77 to '86 they simply sit in whatever interest

1  
2 fund was or should have been in '86.

3 I think at this point simply a matter of  
4 proposition alternative accountings from '86 to '95 is  
5 what I said. And as a matter of fact proposing the  
6 account portion itself. No where in any decision by any  
7 court where Dr. Truong's rights to any commissions  
8 entirely extinguished to say so is not true.

9 MR. LEVY: Your Honor, Justice Cozier  
10 dismissed every single claim that Dr. Truong made to  
11 any of these funds in April of 2000. What he said and  
12 his words that Truong has forfeited all rights to  
13 commissions as a result of wrongdoing.

14 December 13th, 2001 the Appellate Division  
15 affirmed unanimously and held, I am quoting again,  
16 "since it is clear as a matter of law, that plaintiff  
17 Mac Truong breached his fiduciary obligations to his  
18 principals, the third-party interpleaded defendants, the  
19 motion properly found that plaintiff was not entitled to  
20 any portion of the disputed funds as a commission."

21 Your Honor--

22 THE COURT: Clearer than that.

23 Where's the money now?

24 MR. LEVY: Being held by Charles Schwab.

25 THE COURT: All I have to do is direct Charles  
26 Schwab to turn it over to your client.



1  
2 MR. LEVY: That's it.

3 THE COURT: I so direct Schwab.

4 You have your an exception.

5 MR. HERSHOWITZ: Your Honor--

6 THE COURT: Counselor, I terminated my

7 relationship with this case. I <sup>is</sup> made an order, ~~it is~~ *me*

8 *Case is*  
*n* over.

9 MR. LEVY: Is this an self-executing order?

10 THE COURT: I will sign it. Bring the  
11 completed transcript.

12 MR. HERSHOWITZ: Your Honor stay filing a  
13 notice of appeal?

14 THE COURT: No.

15 MR. LEVY: Dismissal of the cross-claim with  
16 prejudicial.

17 *I am* THE COURT: <sup>and</sup> dismissing the cross-claim I am denying the  
18 motion to intervene. I am directing Schwab to turn the  
19 money over to your clients.

20 MR. FOLEY: Charles Schwab has a motion pending  
21 for payment of attorney fees under the interpleader  
22 statute where--

23 THE COURT: Where is that motion.

24 MR. FOLEY: Pending since August of 2000.

25 THE COURT: Downstairs, it's not here.

26 MR. FOLEY: Passed through, we talked about it

1  
2 before.

3 THE COURT: It hasn't come up to me,  
4 counselor. I have no, I only have two motions; the  
5 motion to intervene and the ~~submitted~~ <sup>Summary judgment</sup> motion by the  
6 cross claimant, and that's all I have.

7 MR. FOLEY: You put off a decision on this  
8 until--

9 THE COURT: I don't have a motion, counselor,  
10 was it made as a cross-motion?

11 MR. FOLEY: As a cross-motion.

12 THE COURT: Okay, with respect to which  
13 motion?

14 MR. FOLEY: It was filed.

15 THE COURT: With respect to ~~de~~ which motion;  
16 is it a cross-motion?

17 MR. FOLEY: It was a cross-motion with respect  
18 to Plaintiff's motion to vacate the court order and  
19 summary judgment.

20 THE COURT: That's the, I assume that's this  
21 motion. I see motion sequence 28. Let's see.

22 MR. LEVY: The motion that Mr. Foley was just  
23 referring to.

24 THE COURT: Hold on.

25 MR. FOLEY: I think it's older than that.

26 THE COURT: I don't see it.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

MR. FOLEY: Make it a little easier--

THE COURT: I am looking for it.

I am looking for the papers, counselor. I don't see it in this file. Let me look in the other file.

I only have two files.

MR. FOLEY: May I your Honor; it's only been opposed by Dr. Truong.

THE COURT: Anybody oppose <sup>to</sup> it?

MR. FOLEY: He is now out of the case.

MR. LEVY: No.

THE COURT: The amount? The amount you are agreeable to the amount?

MR. FOLEY: It was-- the amount was \$14,151.50 for Schwab's fees and court costs incurred from June 18th, 1999 through August 32, 2001 only in this case, not in the federal action, not in the bankruptcy action.

MR. LEVY: We have no objection.

THE COURT: That motion is granted.

MR. HERSHKOWITZ: May I put something else on the record?

THE COURT: Of course.

MR. HERSHKOWITZ: Your Honor still is bound by what the Appellate Division clearly said, notwithstanding our disagreement over parts of the

1  
2 decision, it remanded in part for proceeding with the  
3 long accounting.

4 Your Honor has no basis to assume that every  
5 penny in the interpleaded funds are traceable to the  
6 recovery in 1977 and that Dr. Truong never put any of  
7 his own money into any of those accounts.

8 You are now turning over his money without an  
9 accounting. There is no way for the Court to make that  
10 determination.

11 MR. LEVY: May I address that?

12 THE COURT: Of course.

13 MR. LEVY: Judge Cozier granted an accounting  
14 because that was one of our causes of action. As the  
15 principals we asked for an accounting of Dr. Mac  
16 Truong. In addition to disposing of all of his claims  
17 and awarding summary judgment, he directed a long  
18 accounting.

19 If your Honor looks at the decision it says  
20 specifically the purpose to see if the plaintiff is  
21 required to pay any other further cost or surcharges how  
22 to divide the money up between the two corporate  
23 third-party defendants.

24 This is not an accounting to see if he's owed  
25 any money. This accounting is to see if he has to pay  
26 anymore money.

1  
2 It was our cause of action. It's clear in the  
3 complaint, clear in the decision.

4 MR. HERSHKOWITZ: Stipulated that all accounts  
5 should be frozen. He didn't give away his own money.  
6 He has five personal accounts as part of his  
7 interpleaded funds. He was not forfeiting his own  
8 money.

9 THE COURT: Thank you all very much.

10 MR. LEVY: Thank you.

11 \* \* \*

12  
13 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT  
14 OF THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS  
15 PROCEEDING.

16  
17 *R. Feis*  
18 Richard S. Feis  
19 Senior Court Reporter  
20  
21  
22  
23  
24  
25  
26

9/26/02 Souders  
10  
ISC

IRA GAMMERMAN

FILED

SEP 26 2002

COUNTY CLERK'S OFFICE  
NEW YORK